IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 28TH MAY 2007 / 7TH JYAISHTA 1929

MFA.No. 590 of 2000

OPMV.1342/1995 of ADDL.MOTOR ACCIDENT CLAIMS TRIBUNAL, ERNAKULAM
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APPELLANT/PETITIONER:

P. CHIDAMBARAM, S/O. PALANISWAMY,
51A VANNAPPARA, ERODE ROAD,
PERUNDURAI, TAMILNADU.

BY ADV. SMT.VANAJA MADHAVAN

RESPONDENTS/RESPONDENTS:
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1. MRS.UMAMAHESWARAN, W/O. SIVAKUMAR,
KONGANIKALAM, ATTAMPATHI VILLAGE,
MENONPARA, PALAKKAD (DELETED)

2. K. RAGHUNATHA, S/O. KRISHNASWAMY,
C/O. PERIYASWAMY, W/8, DOOR NO.43, S.D.A.COLONY,
COIMBATORE. (DELETED)

3. NEW INDIA ASSURANCE CO. LTD., COIMBATORE,
TAMILNADU.

(R1 AND 2 ARE DELETED FROM THE PARTY ARRAY AT THE RISK OF THE PETITIONER VIDE ORDER IN I.A.1006/2003)

R3 BY ADV. SRI.N.S.MOHAMMED USMAN

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 28/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B. KOSHY and K.P.BALACHANDRAN, JJ.

M.F.A. No. 590 of 2000

Dated this the 28th day of May, 2007

Judgment

Koshy, J.

Appellant, claiming to be a cloth merchant, aged 47, met with a motor accident by which he suffered serious injuries. He claimed Rupees Seven lakhs contending that the accident occurred due to the negligence of the driver of the vehicle insured by the third respondent insurance company. Total compensation awarded by the tribunal was only Rs.92,000/- even though other contentions were accepted. Only quantum of compensation is disputed herein.

2. For disability compensation the Tribunal has awarded only Rs.10,000/-. In the absence of data, the tribunal fixed Rs.1,500/- as the monthly income and no scientific formula was adopted for finding out the disability compensation or compensation for loss of earning capacity. He was treated in the Medical Trust Hospital, Ernakulam. He had the following injuries as can be seen from Ext.A2 wound certificate:

"1. Crush injury on the left leg just below left knee 25 x 15 c.m.

2. Comminuted fracture on upper 3rd of left ulnar with antero lateral subluxation on radial head (motaggia fracture).

3. Posterior cutaneous nerve palsy.

4. Compound fracture of upper half of left leg and knee and lower end of left femur.

5. Comminuted fracture of left tibia with fracture lower end of femur (comminuted fracture of supracondylar extensive.)"

Ext.A4 is the disability certificate wherein it is certified that disability in his left lower limb is 60%. It is also stated that he cannot sit in the floor and stiffness in the knee prevents him from riding vehicles and cycling which is also proved. There was shortening of the leg by 3.5 c.ms. and there will be limbing, but, 60% disability is only to the lower limb. We take that the overall disability is 15%. If 15% disability is taken into account, compensation for disability and loss of earning power will be $1500 \times 12 \times \frac{15}{100} \times 13 = Rs.35,100/-$.

The tribunal has granted only Rs.10,000/- on this count. So, additional compensation payable to the appellant on this count will be Rs.25,100/-. Even though it is argued

by the counsel for the appellant that the amount granted for loss of earning power, pain and suffering etc. are very meagre and the monthly income calculated is very low, considering the total compensation awarded, we are of the opinion that no increase need be given under other heads. The additional compensation of Rs.25,100/- should be deposited by the third respondent insurance company within three months from the date of receipt of a copy of this judgment with 9% interest from the date of application till its deposit. On deposit of the amount, appellant is entitled to withdraw the same.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

vaa

J.B. KOSHY AND
K.P.BALACHANDRAN, JJ.

M.F.A. NO.590/2000

JUDGMENT

Dated:28th May, 2007